

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6454 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

HASMUKHBHAI M PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR. H.L. JANI, AGP, for Respondent No. 1,2,3
MR. B.T. RAO, ADDL. STANDING COUNSEL FOR RESPONDENT
No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 24/09/98

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner has challenged the order of detention dated 13.7.1998 passed by the District Magistrate, Mehsana, in exercise of powers conferred by sub-section (2) of Section 3 of the Prevention of Black Marketing and

Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'P.B. Act'). The petitioner has raised various contentions challenging the order of detention. The petitioner addressed a representation to the District Magistrate, Mehsana dated 3.8.1998 which was received in his office on 4.8.1998 but the same was forwarded to the State Government as late as on 10.8.1998. No explanation has been given by the detaining authority as to why the representation was not forwarded forthwith to the State Government.

A reply has been filed by Shri P.R. Shukla, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Gandhinagar as well as by Shri R.P. Gupta, District Magistrate, Mehsana, the detaining authority. In para 11 Mr. Gupta, the detaining authority, has stated that the representation made by the petitioner's advocate dated 3.8.1998 was received in his office on 4.8.1998 which was forwarded to the Additional Chief Secretary to the State Government in Civil Supplies and Consumer Affairs Department on 10.8.1998. It is evident that no explanation of whatsoever nature has been given by the detaining authority as to why the representation was kept with him for more than six days. In identical matter in an unreported decision of this court in Special Civil Application No. 3275 of 1998 decided on 5.8.1998 such a delay has been found to be fatal. In view of this, the delay in forwarding the representation has caused delay in considering the representation which has infringed the right guaranteed to the detenu under Article 22(5) of the Constitution of India and therefore, the continued detention of the detenu has become illegal.

In view of the aforesaid, this Special Civil Application is allowed. The impugned order of detention dated 13.7.1998 passed by the District Magistrate, Mehsana is quashed and set aside. The detenu shall be released forthwith if not required in any other case. Rule made absolute.

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